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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/928,785

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Mark Thomas Cammarota

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT

PAPER NUMBER

3761

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/928,785	<b>Applicant(s)</b> CAMMAROTA ET AL.	
	<b>Examiner</b> Lynne Anderson	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7,20-24,26,30 and 31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,20-24,26,30 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 25 July 2008 has been entered.

### ***Response to Arguments***

1. Applicant's arguments filed 25 July 2008 have been fully considered but they are not persuasive.
2. In response to the applicant's argument that Harju fails to disclose a different color background surrounding the permanent character graphic, it is noted that providing a different color background would have been obvious to one of ordinary skill in the art, as described in the rejection of the claims below.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-2, 4-7, 24, and 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harju (Des. 313,076).

5. With respect to claims 1 and 2, Harju discloses all aspects of the claimed invention with the exception of the background color surrounding the permanent character graphic being different than the background color surrounding the active object graphic. Harju discloses an absorbent article, as shown in figure 1, comprising an outer cover and an absorbent assembly, as shown in figure 2. Disposed on the outer cover are a permanent character graphic, an animal performing the human behavior of sitting, and an active object graphic, a stoplight, as shown in figures 1 and 3. The animal and stoplight are unrelated to each other. The permanent character graphic is shown sitting, which is performing an activity.

6. Harju discloses an active object graphic depicting a stoplight, as shown in figure 1. Stoplights are well-known to have a yellow background. Therefore, it would be obvious to print the stoplight of Harju with a yellow background, to represent a stoplight and to make the active object portion of the graphic, the lights, stand out from the background. It would therefore be obvious to one of ordinary skill in the art at the time of invention to make the background around the active object graphic a different color than the background surrounding the permanent character graphics to make the active object graphic stand out and more closely resemble a stoplight.

7. With respect to claim 3, a visual segmentation, a picture of a car, is disposed between the character graphic and the active object graphic, as shown in figure 3.

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8. With respect to claim 4, the article further comprises a permanent object graphic, a flower, as shown in figure 3.

9. With respect to claims 5, Harju discloses all aspects of the claimed invention with the exception of the permanent character graphic being involved in an activity utilizing the permanent object graphic. It would have been an obvious matter of design choice for the permanent character graphic being involved in an activity utilizing the permanent object graphic, since this particular configuration of graphics serves no particular purpose and solves no stated problem.

10. With respect to claim 6, the permanent object graphic is not related in subject matter to the active object graphic.

11. With respect to claim 7, the permanent object graphic is interactively unrelated to the active object graphic.

12. With respect to claim 24, the permanent character graphic is disposed on the exterior surface of the outer cover, as shown in figure 3, and the active object graphic is disposed on the interior surface of the outer cover, as shown in figure 2.

13. With respect to claim 30, the article has longitudinal and transverse center lines, first and second end edges, first and second waist regions, and a crotch region. The permanent character graphic is shown in the first waist region, and the active object graphic extends into the crotch region, as shown in figure 3.

14. With respect to claim 31, the active object graphic is disposed between the transverse center line and the permanent character graphic, as shown in figure 1.

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15. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harju (Des. 313,076) in view of Timmons et al. (4,022,211).

16. Harju discloses all aspects of the claimed invention but remains silent as to the nature of the ink used in the active object graphic. Timmons discloses a diaper having an active object graphic, the graphic comprising ink that is soluble in urine, as described in column 3, lines 9-14. This allows the active object graphic to disappear upon wetting, indicating the diaper is wet, as described in column 2, lines 9-13. It would therefore be obvious to one of ordinary skill in the art at the time of invention to use ink that is soluble in urine, as taught by Timmons, in the active object graphic of Harju, to indicate when the diaper has been wetted.

17. Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harju (Des. 313,076) in view of Howell (5,389,093).

18. Harju discloses all aspects of the claimed invention but remains silent as to the nature of the ink used in the active object graphic. Howell discloses a diaper having an active object graphic, the graphic comprising ink that appears and therefore changes color when exposed to urine, as described in column 3, lines 34-38. This allows the active object graphic to appear upon wetting, indicating the diaper is wet, as described in the abstract. It would therefore be obvious to one of ordinary skill in the art at the time of invention to use ink that appears and changes color when exposed to urine, as taught by Howell, in the active object graphic of Harju, to indicate when the diaper has been wetted.

19. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harju (Des. 313,076) in view of Jitoe et al. (5,766,212).

20. Harju discloses all aspects of the claimed invention with the exception of the active object graphic being disposed on a surface of the absorbent assembly that faces the outer cover. Jitoe discloses a diaper having an active object graphic 19 disposed on the surface 4B of the absorbent assembly 4 that faces the outer cover, as shown in figures 1 and 7. Placement of the graphic on the surface of the absorbent assembly allows the graphic to come in contact with urine quickly. It would have been obvious to one of ordinary skill in the art at the time of invention to dispose the active object graphic of Harju on a surface of the absorbent assembly, as taught by Jitoe, to allow the graphic to come in contact with urine quickly.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynne Anderson whose telephone number is (571)272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. A./

Examiner, Art Unit 3761

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761